



In The
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-1299

MARY A. GRAVES, et al.,
Appellants,

vs.

JOHN MEYSTRICK, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

MOTION TO DISMISS OR AFFIRM

JOHN ASHCROFT

Attorney General

MICHAEL L. BOICOURT

Assistant Attorney General

Supreme Court Building

Jefferson City, Missouri 65101

(314) 751-3321

Counsel for Appellees

INDEX

Motion	1
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statement	2
Argument	7
I. The Decision Below Is Clearly Correct	7
II. There Is No Substantial Question of Federal Law Requiring Further Argument	11
Conclusion	13

Citations

CASES

<i>California Human Resources Dept. v. Java</i> , 402 U.S. 121 (1971)	10
<i>Fusari v. Steinberg</i> , 419 U.S. 379 (1975)	7, 12
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970)	3, 7, 8, 12
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	7, 8, 9, 10, 13
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	8
<i>Torres v. New York Dept. of Labor</i> , 333 F.Supp. 341 (S.D.N.Y. 1971)	12
<i>Torres v. New York Dept. of Labor</i> , 405 U.S. 949 (1972)	11, 12

STATUTES

42 U.S.C. Section 503(a)	2, 3, 10, 11, 12
28 U.S.C. Section 2284	2
Section 288.070.3, RSMo Supp. 1975	2
Section 288.070.5, RSMo Supp. 1975	2
Section 288.040.1(2), RSMo Supp. 1975	4

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the appeal taken by the Appellants from the final judgment and decree of the District Court be dismissed on the ground that the decision below is so obviously correct as to warrant no further review, or, in the alternative, that the final judgment and decree of the District Court be affirmed on the ground that the questions on which the decision of the cause depend are so unsubstantial as not to need further argument.

OPINION BELOW

The opinion of the District Court, which has not yet been reported, appears as Appendix A of Appellants' Jurisdictional Statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Prior Proceedings section beginning at page 3 of Appellants' Jurisdictional Statement.

QUESTION PRESENTED

Whether §§288.070.3 and 288.070.5, RSMo Supp. 1975, and the application of those sections by the Appellees, violate Title 42 U.S.C. §503(a)(1) and (3), and the Fourteenth Amendment of the United States Constitution for failure of same to provide notice and a prior evidentiary hearing before a claimant, who had received benefits for a prior week or weeks claimed, for unemployment benefits, is denied benefits for a particular week or weeks claimed.

The question presented is in the exact terminology as submitted to the District Court by joint stipulation.

STATEMENT

This is a direct appeal from the Final Judgment, and Findings of Fact and Conclusions of Law entered on January 3, 1977, by a District Court of three judges specially constituted pursuant to 28 U.S.C. §2284, rendering judgment in favor of all Appellees and against all Appellants and dismissing the cause with prejudice at the cost of

the Appellants. The decision of the three-judge District Court was unanimous.

Mary A. Graves and Gary Morris, together with one other party dismissed upon the voluntary motion of the Appellants before the decision was entered below, initiated this action by the filing of a complaint seeking declaratory and injunctive relief on April 15, 1976. The complaint was filed on behalf of the named plaintiffs individually and as representatives of a class. By an order dated September 22, 1976, the District Court certified a class defined as "including all those persons who have been or in the future will be determined eligible to receive Missouri unemployment compensation benefits who have been or in the future will be denied benefits without timely and adequate prior notice and opportunity for an evidentiary hearing." That order appears as Appendix B of the Appellants' Jurisdictional Statement.

Appellants' complaint challenged Missouri's method of determining continuing eligibility for unemployment compensation benefits on two grounds: one constitutional, the other statutory.

The constitutional challenge was based on the due process clause of the Fourteenth Amendment and can conveniently be characterized as a *Goldberg v. Kelly*, 397 U.S. 254 (1970) claim. The statutory challenge is premised on the theory that Missouri's procedure for determining weekly eligibility for unemployment compensation violates the requirement that benefits be paid "when due" as set forth in §303 of the Social Security Act, 42 U.S.C. §503(a)(1) and the requirement for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied as set forth in §303(a)(3) of the Social Security Act.

All ascertainable facts relevant to a judicial determination of the question presented were submitted to the court below by joint stipulation of the parties on August 31, 1976. These facts have been substantially incorporated into the Findings of Fact entered by the District Court and appear at pages A-3 through A-17 of the Appellants' Jurisdictional Statement. A summary of the Missouri unemployment compensation procedures attacked by the Appellants below, and with regard to which the Appellants now seek Supreme Court review, follows.

In Missouri, unemployment compensation benefits are paid weekly. After an individual has been initially determined eligible to receive benefits, receipt of benefits in any given week will depend upon eligibility for that particular week. A claimant would be ineligible for benefits for a week in which, for example, he was unable to work, or unavailable for work, or had not been actively and earnestly seeking work (Missouri Employment Security Law, §288.040.1(2), RSMo Supp. 1975). To obtain benefits, a claimant is required to file a card each week with the Division of Employment Security (hereafter the Division). On that card the claimant is required to state whether he has refused any work during the week; whether he was able to work and available for work each day of the week; whether he will receive certain benefits from the Veterans Administration during the week; whether he has looked for work during the week by contacting employers, labor unions and other places; and finally, if the claimant has indicated he has done nothing to find work, he is asked to explain why.

A Division Deputy examines the claim card to determine if there is a question as to eligibility. If the card presents no issue as to eligibility and the deputy has no other information which would indicate ineligibility, the

claim is processed and the claimant receives his check for the week. If the information on the card clearly indicates that the claimant is not entitled to benefits, the deputy mails to the claimant a written explanation as to why benefits were denied. This notification advises the claimant that he has a right to appeal the determination.

If the deputy determines on the basis of the claim card, or other information, that there may be a question regarding the claimant's eligibility for that week, the claimant is immediately notified by phone or in writing to report to the deputy's office. It is this situation about which the Appellants are primarily concerned. As a matter of Division policy, the deputies are instructed that when such notification is sent to the claimant to inform the claimant as to the specific question that has been raised regarding eligibility for that particular week. If the claimant reports as requested for an interview with the deputy, the deputy affords the claimant an opportunity to refute the information the deputy has which indicates possible ineligibility for the week. The claimant is given an opportunity to explain or add any facts which relate to his eligibility for benefits for the week in question. The deputy prepares a summary of the interview which the claimant is asked to review and sign if he agrees with the statement. If additional information is necessary for the deputy to make a proper determination of the claim, the deputy will attempt to secure such information from additional parties including the claimant. Based on the information received by the deputy, the deputy will make a determination as to whether the claimant is eligible for the week claimed. If a deputy allows the claim, the check is issued. If a deputy denies the claim, the claim-

ant receives written notice of the reason or reasons for the denial and is advised that he has a right to appeal.

The Appellants raised no question concerning the procedural propriety of appeal determinations in the District Court. An appeal from a deputy's decision is a *de novo* proceeding at which the claimant is entitled to have counsel present, call witnesses, and cross-examine opposing witnesses. The proceeding is conducted by a referee who makes written findings of fact and conclusions of law. An application for review of the referee's decision may be filed with the Labor and Industrial Relations Commission which may allow or deny the application, and if the application is allowed, may affirm, modify, reverse or set aside the decision of the appeal's referee on the basis of evidence previously submitted in the case or additional evidence presented to the Commission at the Commission's discretion. The decision of the Labor and Industrial Relations Commission is then subject to judicial review.

The case was submitted to the three-judge District Court upon joint stipulation, briefs, and oral argument on November 23, 1976. On January 3, 1977, the District Court concluded as a matter of law that the procedural due process requirements of the Fourteenth Amendment are met by the system provided by the State of Missouri for processing unemployment compensation determinations (Jurisdictional Statement, page A-21), and that unemployment compensation benefits are paid, under the existing Missouri procedures, "when due" (Jurisdictional Statement, page A-23).

ARGUMENT

The question presented in the present case clearly does not mandate further proceedings, including oral argument, in the Supreme Court of the United States. An informed reading of cases which this Court has previously been required to hear and dispose of by formal opinion, especially *Fusari v. Steinberg*, 419 U.S. 379 (1975) and *Mathews v. Eldridge*, 424 U.S. 319 (1976), completely supports the joint conclusions that the decision of the District Court is manifestly correct and that the legal question involved in this case cannot at this late stage be considered sufficiently substantial to require further argument in the nation's highest court.

I.

The Decision Below Is Clearly Correct

After exhaustive findings of fact with respect to Missouri's benefit payment and appeals procedures for unemployment compensation benefits, the District Court correctly applied the prevailing case law to those facts when it found that Missouri's procedures were not in violation of the Fourteenth Amendment or the statutory "when due" requirement of the Social Security Act. Because of the lower court opinion correctly disposing of all issues raised by the Appellants' complaint, it is not necessary that further legal proceedings including exhaustive briefs and oral argument be undertaken in the Supreme Court. With respect to the Appellants' constitutional claims, the lower court correctly concluded that *Mathews v. Eldridge*, 424 U.S. 319 (1976) is controlling. As this Court noted in its *Mathews* opinion, only in *Goldberg v. Kelly*, 397 U.S. 254 (1970), on which the Appellants' procedural due process arguments primarily rely, has the Supreme Court

"held that due process requires an evidentiary hearing prior to a temporary deprivation." *Mathews v. Eldridge*, *supra* at 340.

In *Mathews*, this Court distinguished Social Security disability benefits, available to individuals who are unable to engage in gainful employment by reason of physical or mental impairment, from welfare benefits and held that due process did not require a pre-determination hearing in the case of the former. The analogy between Social Security disability benefits and unemployment compensation insurance benefits is so striking as to mandate the holding of the District Court.

Due process is a flexible concept calling for such procedural safeguards as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). This Court, in its opinions in *Mathews v. Eldridge*, *supra*, and *Goldberg v. Kelly*, *supra*, made available to the lower court in this cause three distinct factors to consider in its determination regarding the constitutional sufficiency of administrative procedures prior to initial termination of unemployment compensation benefits and pending review: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional substantive procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

With respect to the private interest involved, as in *Mathews*, a claimant for unemployment compensation benefits is awarded full retroactive relief if he ultimately prevails on any one of the various appeal levels available to him. Unemployment compensation is an insurance pro-

gram. Benefits are not based on need but solely on previous employment, the amount of income from that previous employment, and the ability and availability of the claimant for work. Both the present case and the *Mathews* case involve situations where a person is unable to be gainfully employed. In the present case, because the individual was unable to secure a job although ready, willing and able to work. In *Mathews*, because the person has a physical disability that precludes work. Brutal need is even less a factor in the present case than in *Mathews*, however, because the unemployment compensation claimant obviously has a better chance of securing employment in the future than the disabled worker.

The adequacy of Missouri's existing procedures for processing unemployment compensation claims is constitutionally sufficient, and the risk of erroneous deprivation is minimized by the notice and interview procedure which affords the claimant an immediate opportunity to correct a prospective erroneous denial of benefits and the three-tiered appeal apparatus available to the claimant. The excellent record of the Appellees' deputies with respect to the reversal rate of claim determinations, and Missouri's excellent record for timely processing appeals from deputy determinations, which minimizes the delay in benefits in those situations where the claimant prevails on appeal, fully support the conclusion of the District Court that *Mathews* is controlling and mandates judgment for the Appellees.

The government of the State of Missouri also has an interest in minimizing the fiscal and administrative burdens of administering the unemployment compensation program. As in *Mathews*, given the right of a claimant to an evidentiary hearing as well as subsequent judicial review before the denial of a claim becomes final, the

fiscal and administrative burdens which would be imposed upon the state are out of proportion to any benefits which would result from pre-determination hearings.

The District Court was clearly correct in its determination that *Mathews v. Eldridge*, *supra*, by analogy to the stipulated facts in the present cause, mandated judgment on behalf of the Appellees with respect to the procedural due process claims raised by the Appellants.

Likewise, the opinion of the District Court was clearly correct in rejecting Appellants' statutory "when due" claims.¹

The District Court found correctly that *California Human Resources Dept. v. Java*, 402 U.S. 121 (1971), on which the Appellants substantially base their statutory claim, is not applicable to the procedures used by Missouri to process claims for unemployment compensation benefits. In *Java*, this Court found that California was not paying unemployment compensation benefits "when due" when an administrative determination had been made that a particular claimant was eligible but payments were automatically suspended upon the appeal of that determination by the claimant's former employer.

In the present case there has been no administrative determination of eligibility prior to appeal. To the contrary, a determination has been made with respect to a

1. Section 303(a)(1) of the Social Security Act, Title 42 U.S.C. §503 provides in part:

"The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act includes provision for . . .

"1. Such methods of administration . . . as are found by Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. . . ."

claim for benefits for a particular week that the claimant is not eligible for unemployment compensation benefits for that week and that no benefits are due on the claim. It should be obvious that unemployment compensation benefits are not due until the determination is made that the claimant is eligible to receive same.

Furthermore, §303(a)(1) is not absolute in prohibiting any benefit delay, but rather requires that Missouri's method of administering unemployment compensation claims "be reasonably calculated to insure full payment of unemployment compensation when due."² As evidence that Missouri meets the requirements of timeliness and accuracy inherent in the "when due" requirement of §303(a)(1) are the facts that Missouri has a reasonably prompt appeals procedure available,³ and that the initial decision appealed from was right in approximately eighty percent of the cases appealed. It can be inferred that the accuracy of Appellees' deputies with respect to correct determination is even greater in those cases not appealed.

II.

There Is No Substantial Question of Federal Law Requiring Further Argument

In 1972, this Court summarily affirmed the judgment of a three-judge district court in New York in *Torres v. New York Dept. of Labor*, 405 U.S. 949 (1972).⁴ The same constitutional and statutory claims were made in

2. See Federal Register, V. 41, No. 143, p. 30464 (July 23, 1976).

3. At page 7 of Appellants' Jurisdictional Statement, it is acknowledged that appeals promptness in Missouri is very typical as opposed to obviously extended.

4. The decision of the three-judge district court affirmed by the Supreme Court is reported at 333 F.Supp. 341 (S.D.N.Y. 1971).

Torres as in the present case. A New York procedure much like the Missouri procedure with respect to unemployment compensation determinations was upheld on both constitutional and statutory grounds by the District Court.

Due to subsequent decisions by the Supreme Court, there are even more compelling reasons why the present case should be summarily affirmed than were present at the time the Court affirmed *Torres* without the necessity of briefs and oral argument. In 1975, the case of *Fusari v. Steinberg*, 419 U.S. 379 (1975) reached the Supreme Court challenging Connecticut's procedure of suspending benefits without a hearing for claimants determined administratively to be ineligible for benefits. The attack, like the present case, was based on both *Goldberg v. Kelly*, *supra*, constitutional grounds and the "when due" requirements of §303. The Supreme Court remanded the case without reaching the merits because Connecticut's unemployment compensation law had been amended during the time the case was decided by the district court and argued in the Supreme Court.⁵ Implicit in the Court's opinion in *Fusari* is the conclusion that it is not necessary for a state to conduct a full due process adversary evidentiary hearing before making a determination that a claimant is ineligible for unemployment compensation benefits. Otherwise, there would have been absolutely no reason to remand the case to the lower court to reconsider in light of intervening statutory changes. The changes in Connecticut law still did not require a pre-determination hearing with all the traditional due process requirements, and there was no doubt but what the original plaintiffs in *Fusari* were not afforded a pre-determination eviden-

5. The changes in Connecticut's statutory law which the Supreme Court instructed the lower court to reconsider on remand correspond with statutory procedures already in effect in Missouri.

tiary hearing. Because the Court recognized in *Fusari* that procedural due process was a flexible concept depending in part on a prompt and adequate administrative review procedure, and given the facts included in the lower court's opinion concerning the accuracy of benefit determinations and the promptness and adequacy of review under the Missouri system, the Court should affirm without further argument.

Because the opinion of the court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), more completely discussed in the preceding section of this Argument, is so clearly analogous to the facts of the present cause, the Court should not be required to entertain additional briefs and argument. The *Mathews* opinion represents a comprehensive explication of procedural due process requirements for government entitlement programs other than welfare. The same opinion could have been written almost verbatim substituting unemployment compensation benefits for Social Security disability benefits. It should not be necessary for the Court to repeat the lengthy analysis of *Mathews* by opinion in the present case. *Mathews v. Eldridge*, *supra*, is clearly controlling and is a sufficient basis for this case to be summarily affirmed.

CONCLUSION

Wherefore, the Appellees respectfully submit that the decision below is so obviously correct as to warrant no further judicial review and that the questions on which the decision of this case depend are so unsubstantial as not to need further argument, and Appellees respectfully move the Court to dismiss this appeal or, in the alternative,

to affirm the judgment entered in this cause by the United States District Court for the Eastern District of Missouri.

Respectfully submitted,

JOHN ASHCROFT

Attorney General

MICHAEL L. BOICOURT

Assistant Attorney General

Supreme Court Building

Jefferson City, Missouri 65101

(314) 751-3321

Counsel for Appellees